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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,341

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Jean-Pierre Klein

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6229

466

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YOUNG & THOMPSON

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EXAMINER

KENNY, DANIEL J

ART UNIT

PAPER NUMBER

3633

NOTIFICATION DATE

DELIVERY MODE

04/01/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,341	<b>Applicant(s)</b> KLEIN, JEAN-PIERRE	
	<b>Examiner</b> DANIEL KENNY	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6 October 2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A partition is claimed in claim 9, yet it is unclear how the device of claim 1 fits into the partition. For example, is claim 9 drawn to a kit or to an assembled structure?

The claim will be examined as best understood.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

**Claims rejected under 35 U.S.C. 102(b) as being anticipated by Karytinov (4,918,899).**

Claim 1 – Karytinov discloses a device capable of earthquake resistant mounting of a partition between a floor and a ceiling, said partition having a framework comprised of a lower rail and an upper rail that are substantially horizontal and configured to

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connect to substantially vertical uprights for connecting the upper and lower rails, the framework configured to fixably connect with a covering (6), the device comprising:

a slide (11) of profiled section, having arms (15) forming a substantially U-shaped section and capable of being joined to an upper rail;

a top runner (20) comprised of a rail with two side flanges (15') extending parallel to and within the arms of the U-shaped section of the slide such that the slide and the top runner are movable relative to each other in a vertical direction, the top runner capable of being fixed to the ceiling; and

reversible snap-fitting means (21) between the slide and the top runner, the snap-fitting means comprised of first and second matching bosses, the first boss projecting inward respective of the flanges of the top runner, and the second boss projecting inward respective of the arms of the slide,

wherein the slide and top runner are each mounted to move relative to each other in a vertical direction, and

wherein the first boss is configured, in a resting position, to locate in the second boss.

The language in the preamble is considered intended use, and as such it is given only minimal patentable weight, the device of Karytinios being capable of the intended use.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 9, and 14 – are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinios.**

Claim 1 – Rostock (Fig. 1) discloses a device capable of the earthquake resistant mounting of a partition between a floor and a ceiling, said partition having a framework comprised of a lower rail and an upper rail that are substantially horizontal and configured to connect to substantially vertical uprights for connecting the upper and lower rails, the framework configured to fixably connect with a covering, the device comprising:

a slide (18, 25, 26) of profiled section, having arms (25, 16) forming a substantially U-shaped section and configured to be joined to the upper rail (19);

a top runner (4) comprised of a rail with two side flanges (27) extending parallel to and within the arms of the U-shaped section of the slide such that the slide and the top runner are movable relative to each other in a vertical direction, the top runner being configured to be fixed (3) to the ceiling.

Karytinios discloses reversible snap-fitting means (21) between a slide (20) and a top member (20), the snap-fitting means comprised of first and second matching

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bosses, the first boss projecting inward respective of the flanges of the top member, and the second boss projecting inward respective of the arms of the slide,

wherein the first boss is configured, in a resting position, to locate in the second boss.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the bosses in Rostock for “better frictional engagement” than is provided by Rostock alone.

Claim 9 – Rostock discloses a partition (Fig. 1) comprising:

the device according to claim 1;

a substantially horizontal lower rail (not shown in Fig.1);

a substantially horizontal upper rail (19), said lower rail and said upper rail being capable of being connected to substantially vertical uprights (at for example, the flanges), and said upper rail being capable of joining (using fasteners) with said device; and

a covering (12) fixed to said upper and lower rails.

Claim 14 – Rostock discloses a partition comprising:

a first rail extending in a first direction;

a second rail spaced from said first rail and extending in the first direction;

a device configured to mount said second rail on a surface; and

a body (11) extending between said first and second rails and fixed to said first and second rails (by 17), wherein the second rail is configured to join with said device, wherein the device is comprised of a slide of profiled section, with arms forming a substantially U-shaped section configured to be joined to the second rail a runner configured to be fixed to the surface and comprised of a third rail with two side flanges extending parallel to and within the arms of the U-shaped section of the slide such that the slide and the runner are movable relative to each other in the first direction,

Karytinios discloses reversible snap-fitting means (21) between a slide (20) and a top member (20), the snap-fitting means comprised of first and second matching bosses, the first boss projecting inward respective of the flanges of the top member, and the second boss projecting inward respective of the arms of the slide,

wherein the first boss is configured, in a resting position, to locate in the second boss.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the bosses in Rostock for “better frictional engagement” than is provided by Rostock alone.

**Claim 4 – is rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinios and in further view of Sykes (4,905,428).**

Sykes discloses a slide comprising at free ends of each of arms of a U-shaped section, a rim (128) extending outwardly of the U of the U-shaped section, substantially perpendicular to the arms of the U.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the rim in Rostock to form a “peripheral frame” (col. 3, line 13).

**Claim 5 – is rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinis and in further view of Sykes and JP 2000-320050.**

Claim 5 – JP 050’ discloses an elastic joint (32) adapted to be located between a top of a wall panel (31) and a ceiling on which the top runner (30) is fixed.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the joint in Rostock to for aesthetic value (a flat front face appearance).

**Claim 6 – is rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinis and in further view of Herren (6,058,668).**

Herren discloses a top runner comprising a housing, disposed between side flanges (54), configured to receive a fire resistant material (80).



It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the housed material in Rostock for fire-retardant properties.

**Claims 7, 8, and 13 – are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinis and in further view of JP 09-256521..**

JP '521 discloses a U-section anchorage reinforcing member (12, Fig. 4) disposed in a runner, and transversely with respect to a rail.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the member in Rostock for reinforcement.

**Claims 10-12 - are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostock (DE2836126) in view of Karytinis and in further view of JP 2000-320050.**

Claims 10 and 12 – Rostock discloses an upper portion of a covering (13) fixed (via 17) so as not to extend beyond the slide forming a free space between the covering and the ceiling, and JP '050 discloses a space configured to be filled by a joint of elastic material. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the joint in Rostock to for aesthetic value (a flat front face appearance).

Claim 11 - JP 050' discloses covering boards mounted so as to be floating with respect to the lower rail.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Regarding the § 112 rejection of claim 9, the amendment to claim "a partition" does not address the rejection, as a partition is claimed in claim 9, yet the body of the claim recites elements of a kit or to an assembled structure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL KENNY whose telephone number is (571)272-9951. The examiner can normally be reached on Mon-Fri. 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. K./  
Examiner, Art Unit 3633

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633